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In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
)	
Common Carrier Bureau Questions)	DA 97-385

AMERITECH COMMENTS IN RESPONSE TO
COMMON CARRIER BUREAU QUESTIONS

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**AMERITECH COMMENTS IN RESPONSE TO
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Ameritech submits these comments in response to the questions raised by the Common Carrier Bureau ("Bureau ") regarding to the customer proprietary network information ("CPNI") provisions of §222 of the Telecommunications Act of 1996 ("Act"), as they relate to the requirements of §§272 and 274 of the Act.¹

I. INTRODUCTION AND SUMMARY

The Bureau's questions focus potential BOC obligations with respect to CPNI that arise under §§272 and 274 of the Act, which impose "separate" and "separated" affiliate requirements on BOC provision of in-

¹ Notice, DA 97-385 (released February 20, 1997) ("Notice").

region interLATA telecommunications and electronic publishing, respectively.

The Act's primary CPNI provision, §222, applies without distinction to all telecommunications carriers, for all purposes. The Commission, therefore, should avoid creating any unique CPNI obligations for the BOCs that are not specifically compelled by the terms of §§272 and 274.

This statutory approach is consistent with sound public policy. From a privacy perspective, customers' expectations are the same whether their CPNI is in the hands of an incumbent local exchange carrier ("ILEC"), a competitive local exchange carrier ("CLEC"), an interexchange carrier ("IXC"), a competitive access provider ("CAP"), or a commercial mobile radio service ("CMRS") provider. Customers naturally expect that companies that they do business with will have information about their purchases and will use that information to tell them about other products and services that they might be interested in. They also expect that protection against inappropriate use of that information will be the same regardless of the type of carrier.

Moreover, there is no reason to believe that a BOC possesses more or better CPNI. Indeed, from a competitive perspective, telecommunications carriers other than BOCs are likely to possess CPNI about a far greater number of customers than any BOC, which, by its very nature, may be

more valuable in marketing interLATA services and electronic publishing.

For example, when he was the executive vice president of AT&T's

Consumer and Small Business Division, Joseph Nacchio boasted:

We now have about 60 percent of the long distance market in the U.S. That translates into a relationship with some 90 million customers and gives us an enormous opportunity as we extend the brand into new areas. But to do this effectively, we have to understand customers for communications services better than anyone else.

* * *

Even before our restructuring announcement, we were working on improving our infrastructure to support a focus on discrete market segments. Our primary approach to this is through our database marketing capability. We now have a database with information about nearly 75 million customers. We know their wants, needs, buying patterns, and preferences.²

Thus, based on statutory, customer privacy and competitive perspectives, the Commission should not impose on BOCs additional restrictions relative to CPNI that are not called for by the specific language of §§272 and 274, especially since those restrictions could frustrate BOCs' ability to serve their customers and meet their expectations.

Following is a discussion of the principles involved in the Bureau's questions. That discussion will show particularly that BOC use of CPNI to market the services of a §272 affiliate is exempt from the nondiscrimination requirements of §272(c) and that there is no general nondiscrimination

² Morgan Stanley Conference, February 13, 1996.

requirement applicable to the disclosure of CPNI by a BOC to a §274 affiliate. In both cases, §222 may require some form of consent for such transfer and use. Since neither case involves transfer of the information outside the corporate umbrella, an opt-out presumed consent mechanism is sufficient to protect customers' privacy interests.

Ameritech's specific answers to the Bureau's specific questions are provided in Attachment A.

II. INTERPLAY BETWEEN SECTION 222 AND SECTION 272.

A. Nondiscrimination Requirements Do Not Apply to a BOC's Use of CPNI to Market the Services of Its §272 Affiliate.

A BOC's activity in marketing or selling the services of its §272 affiliate is expressly exempt from the nondiscrimination requirements of §272(c).³ That means that the BOC's use of CPNI in that effort, the type of customer consent required for that use, and the solicitation of that consent, which are all part of that joint marketing activity, are exempt from the nondiscrimination requirements as well and are subject only to the requirements of §222. The Commission appears already to have reached this same conclusion:

We emphasize that, if a BOC markets or sells the services of its section 272 affiliate pursuant to section 272(g), it must comply with

³ See §272(g)(3).

the statutory requirements of section 222 and any rules promulgated thereunder.⁴

Such a conclusion will also achieve parity between how the BOCs and other telecommunications providers use CPNI in their joint marketing efforts.

Such a joint marketing “level playing field” is a goal already endorsed by the Commission:

After a BOC receives authorization under section 271, the restriction in section 272(g)(2) [prohibiting joint marketing until §271 authority is received] is no longer applicable, and the BOC will be permitted to engage in the same type of marketing activities as other service providers.⁵

Imposing nondiscrimination obligations on the BOCs concerning their use of CPNI in marketing and selling the services of their §272 affiliates that do not apply to the joint marketing activities of other providers would be inconsistent with that goal and contrary to the express terms of §272(g)(3).

B. Opt-Out Consent Is Sufficient for BOC Joint Marketing Activity.

If the Commission decides to retain the “three-category” approach to telecommunications services proposed in the NPRM in this docket, some

⁴ *In the Matter of Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (released December 24, 1996) (“Non-Accounting Safeguards Order”) at ¶300.

⁵ *Id.* at ¶291.

form of customer approval may be required for a BOC to use local exchange CPNI in marketing the services of its §272 affiliate.⁶

However, in this case, the information never leaves the BOC/affiliate corporate umbrella and the internal use of that data does not violate customers' privacy expectations. As the Commission itself noted in the context of BOC use of CPNI to market enhanced services:

[W]e do not believe that such internal BOC access to CPNI generally raises significant privacy concerns. . . A more extensive prior authorization rule is not necessary to protect customers' privacy interest.⁷

As noted above, customers naturally expect that companies that they do business with, like Ameritech or AT&T, Southwestern Bell or Sprint, will have information about their purchases and will use that information to tell them about other products and services that may be of interest to them.⁸ Therefore, where a BOC is marketing a service of its §272 affiliate, an "opt-out" mechanism -- whereby customers are notified of their right to prohibit

⁶ *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Notice of Proposed Rulemaking, FCC 96-221 (released May 17, 1996) ("NPRM") at ¶ 22. Specifically, the Commission has tentatively concluded that local and intraLATA service is a single telecommunications service distinct from interLATA service such that the use of CPNI derived from the former cannot be used to sell the latter without some form of customer consent.

⁷ *In the Matter of Computer III Remand Proceedings*, CC Docket No. 90-623, Report and Order, FCC 91-381, 6 FCC Rcd. 7571 (released December 20, 1991) at note 159.

⁸ Such use beneficially avoids bothering other customers with information about services that they are less likely to be interested in.

“out-of-category” use of their CPNI -- is be sufficient to protect customers’ privacy interests.⁹ If, after notification, customers do not affirmatively elect to prohibit the use of CPNI by the BOC or its affiliates for purposes other than those related to the local exchange/intraLATA service category, consent may reasonably be presumed.

As Ameritech noted in its comments in response to the NPRM, the fact that §222(c)(1) omits the terms both “written” and “affirmative” that were specifically included by Congress in §222(c)(2) is compelling evidence that the customer approval contemplated by §222(c)(1) need be neither written nor affirmative. Thus, an opt-out procedure is legally sufficient to authorize this out-of-category activity.

Finally, to ensure that BOCs are able “to engage in the same type marketing activities as other service providers,”¹⁰ the consent requirements imposed on a BOC’s use of CPNI to market the services of its §272 affiliate should be no more onerous than those imposed on AT&T’s or MCI’s use of interLATA CPNI in the marketing of their local exchange services.

⁹ Clearly, the BOCs should be able to honor oral and written consent as well.

¹⁰ Note 3, *supra*.

C. The Law Does Not Require Identical Treatment for the Transfer of CPNI to a §272 Affiliate and to a Non-Affiliate.

With respect to the transfer by a BOC of CPNI to its §272 affiliate, if that transfer is for the purpose of the joint marketing contemplated by §272(g) and if the CPNI is only used by the §272 affiliate for that purpose, then the nondiscrimination provisions of §272(c) would not apply -- as specified by §272(g)(3). To the extent that the §272 affiliate uses the CPNI to market its own interLATA services in this joint marketing effort, customer consent would be required under the Commission's three-category approach. However, because the disclosure would not be outside the BOC's corporate umbrella, customers' privacy interests are not unduly implicated and, as noted above, opt-out presumed consent would be sufficient to authorize the transfer of the information. Moreover, soliciting customer consent in this case -- as with the BOC's own use of the information for joint marketing purposes -- does not implicate §272(c)'s nondiscrimination requirements because of the §272(g)(3) exemption.

If the transfer of CPNI from the BOC to its §272 affiliate is not in connection with joint marketing activity contemplated by §272(g), and, therefore, not within the §272(g)(3) exemption, there is nonetheless good reason to believe that Congress never intended CPNI to be covered by the nondiscrimination requirements of §272(c)(1) in any case. First, there is no

specific mention of CPNI in the provision. Second, CPNI is dealt with comprehensively in §222 for all carriers from both privacy and competitive perspectives. Both of these facts are indicators that Congress intended §222 to be the final word on CPNI in all cases. That being the case, neither the type of consent required of a customer for transfer of CPNI to a §272 affiliate nor the solicitation of that consent are included within the embrace of §272(c)(1).

However, even if §272(c)(1) does apply to the transfer of CPNI to a BOC's §272 affiliate where the transfer is not specifically tied to joint marketing activity, the end result should be the same. Although customer consent would be required for the transfer of CPNI, both to the §272 affiliate and to unaffiliated third parties, §272(c)(1) should not be interpreted as requiring identical types of customer consent because customers' privacy interests differ greatly in these two cases. As noted above, when the transfer of CPNI is within the BOC's corporate/affiliate group, significant privacy concerns do not arise. In this case, the opt-out presumed consent mechanism described above would be sufficient to protect customers' privacy interest. However, it would appear that some sort of affirmative customer consent would properly be required before transferring CPNI to an unaffiliated third party -- because such a transfer is not consistent with customers' expectations since it would open the

customer to unrestricted marketing by entities with whom the customer has no business relationship.

Further, if §272(c)(1) does apply to the transfer of CPNI to a §272 affiliate outside a joint marketing context, “solicitation of customer consent” should nonetheless not be regarded as a “service” under that section that must be offered to other providers.¹¹ It would simply not make sense to require BOCs to solicit customer consent to transfer CPNI to specific third parties with whom the BOC and the customer have no relationship. Customers will surely look upon such a request as inappropriate since there is no common name behind the BOC and suggested transferee to “vouch” for the proper use of the information. Moreover, any misuse of the information by the third party to whom the information is transferred as a result of customer consent given in response to the BOC solicitation would reflect negatively on the BOC. Finally, requiring BOCs to solicit consent for others raises serious First Amendment questions and, therefore, should not be inferred where it has not been specifically required by Congress.

¹¹ It would make more sense to view “solicitation of consent” as a service to customers, many of whom would want to know about new products and services that may be of great utility to them.

In addition, even if §272(c)(1) does apply to the transfer of CPNI to a §272 affiliate outside a joint marketing context, it would never mean that BOC may or disclose CPNI to an affiliate only if that CPNI is made available to all other entities. It would be contrary to customers' privacy interests and the spirit of §222 either (1) to presume that a customer's consent for the disclosure of CPNI to a BOC's §272 affiliate automatically constitutes authorization for unrestricted disclosure to the world, or (2) to prohibit a BOC from disclosing CPNI to its §272 affiliate consistent with the customer's authorization unless the customer also consents to disclosing that information to the world. The former would violate a customer's privacy expectations without his/her knowledge while the latter would amount to "blackmail," denying the customer's right to control CPNI use. Rather, at most §272(c)(1) would mean that, where applicable, if customer consent is required for third-party access to CPNI, some sort of customer consent would also be required for transfer that information to a §272 affiliate.

Finally, §272(e)(2) does not pertain to CPNI because the section deals specifically with "facilities, services, or information concerning [the BOC's] provision of exchange access." This section was intended to cover technical information or other service-related information regarding exchange access

services that the §272 affiliate would be purchasing from the BOC on the same terms as other IXCs.

III. THERE IS NO GENERAL NONDISCRIMINATION REQUIREMENT IN SECTION 274.

First, it must be noted that §274 is significantly different from §272 in that there is no general nondiscrimination requirement applicable to a BOC's relationship with its §274 affiliate, as there is in the case of its §272 affiliate. In fact, the statute uses different terms with respect to each affiliate. The §272 manufacturing and interLATA services entity is called the "separate affiliate." The §274 electronic publishing entity is called the "separated affiliate." It would have been easy for Congress to have included electronic publishing in the categories of services for which a §272 affiliate is required if it had wished to impose identical requirements on interLATA services and electronic publishing; but it did not. That being the case, there is nothing in the Act from which a general nondiscrimination obligation can even be implied with respect to the transfer of CPNI from the BOC to its §274 affiliate or, therefore, to soliciting consent for such transfer.

With that in mind, it is important to focus on those subsections within §274 in which the term "nondiscriminatory" is specifically used to determine whether they have any application to the disclosure of CPNI by a BOC to its separated electronic publishing affiliate.

Under §274(c)(2)(A), a BOC is permitted to provide inbound telemarketing or referral services for its separated affiliate or electronic publishing (“EP”) joint venture if it makes those services available to all EP providers on request on nondiscriminatory terms. There is nothing in this section that speaks to the transfer of CPNI. Clearly, no transfer of CPNI is necessarily implied in the provision of inbound telemarketing or referral services. To the extent that CPNI is not used in the process, no customer consent is required. To the extent that CPNI is used, customer consent may be required if the activity is considered “out-of-category” as noted above. If the BOC uses CPNI to provide inbound telemarketing or referral services to its separate affiliate, there is no requirement to transfer the CPNI to an unaffiliated EP provider in the absence of affirmative consent from the customer. The only nondiscrimination obligation is for the BOC to provide, on request, the same inbound telemarketing or referral services to unaffiliated EP providers.

Under §274(c)(2)(B), a BOC may engage in a nondiscriminatory teaming or business arrangement with its separated affiliate or any other EP provider. The Commission has interpreted this to mean:

that a BOC may provide to the teaming arrangement the necessary facilities, services and basic telephone service information for electronic publishing, provided that such facilities, services and

information are offered on a nondiscriminatory basis both to other teaming arrangements and to unaffiliated electronic publishers.¹²

Clearly, if the BOC uses CPNI to provide a service to a teaming arrangement, and if the CPNI is not transferred outside the BOC, there is no requirement to transfer the CPNI to an unaffiliated entity or another teaming arrangement, although the BOC may have the obligation to provide a similar service to other teaming arrangements or EP providers. In either case, if the use of the CPNI involves an “out-of-category” activity, customer consent may be required, at least on an opt-out basis as noted above.

Aside from the above limitations, there is no general restriction under §274 on the provision of CPNI from a BOC to its §274 affiliate. Pursuant to the above analysis, if “out-of-category” services are involved, customer consent may be required for the transfer, but opt-out presumed consent would suffice.¹³

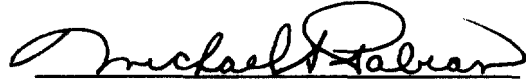
Similarly, there is nothing in the Act from which it can even arguably be implied, that, if a BOC solicits consent for the transfer of CPNI to its §274 affiliate, it must also solicit consent for unaffiliated EP providers. Of

¹² *In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35 (released February 7, 1997) (“EP Order”) at ¶ 168.

¹³ Pursuant to §222(c)(2), the BOCs would be required to honor any written customer authorization presented by an unaffiliated EP provider.

course, as noted above, imposing such a requirement would raise significant First Amendment issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Pabian", written over a horizontal line.

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AMERITECH ANSWERS TO BUREAU QUESTIONS

In light of the discussion contained in the main filing to which this is attached, Ameritech submits the following answers to certain of the Bureau's questions:

Question 1. Does the requirement in section 272(c)(1) that a BOC may not discriminate between its section 272 "affiliate and any other entity in the provision or procurement of . . . services. . . and information. . ." mean that a BOC may use, disclose, or permit access to CPNI for or on behalf of that affiliate only if the CPNI is made available to all other entities? If not, what obligation does the nondiscrimination requirement of section 272(c)(1) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

Answer 1. No. None. See pp. 4-11 of the main filing.

Question 2. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), does the nondiscrimination requirement of section 272(c)(1) mandate that a BOC's section 272 affiliate be treated as a third party for which the BOC must have a customer's affirmative written request before disclosing CPNI to that affiliate?

Answer 2. No. See p. 9.

Question 3. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs), treat their affiliates and other intra-company operating units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone exchange service and exchange access)

as third parties for which customers' affirmative written requests must be secured before CPNI can be disclosed? Must the answer to this question be the same as the answer to question 2?

Answer 3. No. Yes. See pp. 6-7, 9.

Question 4. If section 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with its section 272 affiliate? If, for example, a BOC may disclose CPNI to its section 272 affiliate pursuant to a customer's oral approval or a customer's failure to request non-disclosure after receiving notice of an intent to disclose (i.e., opt-out approval), is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?

Answer 4. No. See pp. 6-7, 9.

Question 5. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?

Answer 5. No. See pp. 6-7, 9.

Question 6. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its section 272 affiliate also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated entities, when it provides such a service for its section 272 affiliate? If so, what specific

steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 272 affiliate over unaffiliated entities? If the customer approves disclosure to both the BOC's section 272 affiliate and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 272 affiliate?

Answer 6. No. See pp. 8-10.

Question 7. If, under sections 222(c)(1), 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliate and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI, what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section 272(c)(1)? What specific obligations with respect to the use, disclosure, and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?

Answer 7. There is no nondiscrimination obligation with respect to §272(g) activities. §222(c) imposes only those same obligations that applicable to other "out-of-category" activities. See pp. 4-8.

Question 8. To what extent is soliciting customer approval to use, disclose, or permit access to CPNI an activity described in section 272(g)? To the extent that a party claims that CPNI is essential for a BOC or section 272 affiliate to engage in any of the activities described in section 272(g), please describe in detail the basis for that position. To the extent that a party claims that CPNI is not essential for a BOC or section 272 affiliate to engage in those activities, please describe in detail the basis for the position.

Answer 8. Soliciting customer consent is included in §272(g) if it is to further an activity contemplated by that section. Without CPNI, the

permission granted by §272(g) would, for the most part be meaningless and would frustrate the intent of §272(g)(3) that BOCs be permitted to market like other providers. See pp. 4-10.

Question 9. Does the phrase “information concerning [a BOC’s] provision of exchange access” in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase “services. . .concerning [a BOC’s] provision of exchange access” in section 272(e)(2) include CPNI-related approval solicitation services? If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC “shall not provide any. . .services. . .or information concerning its provision of exchange access to [its affiliate] unless such. . .services. . .or information are made available to other providers of interLATA services in that market on the same terms and conditions”?

Answer 9. CPNI and consent solicitation are not covered by §272(e)(2). See pp. 11-12.

Question 10. Does a BOC’s seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 272 affiliate constitute a “transaction” under section 272(b)(5)? If so, what steps, if any, must a BOC and its section 272 affiliate take to comply with the requirements of section 272(b)(5) for purposes of CPNI?

Answer 10. Yes, unless it is viewed as a service being provided to the customer. It would be reduced to writing and costs would be allocated consistent with the Commission’s rules.

Question 11. Please comment on any other issues relating to the interplay between sections 222 and 272.

Answer 11. See pp. 1-12.

Question 14. Does section 274(c)(2)(A) mean that a BOC that is providing “inbound telemarketing or referral services related to the provision of electronic publishing” to a separated affiliate, electronic publishing joint venture, or affiliate may use, disclose, or permit access to CPNI in connection with those services only if the CPNI is made available, on nondiscriminatory terms, to all unaffiliated electronic publishers who have requested such services? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

Answer 14. No. §274(c)(2)(A) requires nondiscrimination only in the provision of inbound telemarketing or referral services related to the provision of electronic publishing. See p. 13.

Question 15. To the extent that basic telephone service information is also CPNI, should section 274(c)(2)(B) be construed to mean that a BOC, engaged in an electronic publishing “teaming” or “business arrangement” with “any separated affiliate or any other electronic publisher,” may use, disclose, or permit access to basic telephone service information that is CPNI in connection with that teaming or business arrangement only if such CPNI is also made available on a nondiscriminatory basis to their teaming or business arrangements and unaffiliated electronic publishers? If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(B) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?

Answer 15. No. BOC internal use of CPNI would not, by itself, constitute “provision” of any information to the teaming arrangement. See pp. 13-14.

Question 16. If section 222(c)(2) permits a BOC to disclose a customer’s CPNI to a third party only pursuant to the customer’s “affirmative written request,” does section 274(c)(2)(B) require that the entities, both affiliated and non-affiliated, engaged in section 274 teaming

or business arrangements with the BOC be treated as third parties for which the BOC must have a customer's affirmative written request before disclosing CPNI to such entities?

Answer 16. No. Affiliates need not be regarded as third parties but some form of customer consent may be required if "out-of-category" activity is involved.

Question 17. Should section 274(c)(2)(C) be construed to mean that an electronic publishing joint venture be treated as a third party for which the BOC must have a customer's approval, whether oral, written, or opt-out, before disclosing CPNI to that joint venture or to joint venture partners?

Answer 17. To the extent that "out-of-category" activity is involved, some form of customer approval may be required.

Question 18. Must a BOC that is providing inbound telemarketing or referral services to a "separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher" under section 274(c)(2)(A) obtain customer approval pursuant to section 222(c) before using, disclosing, or permitting access to CPNI on behalf of such entities? If so, what forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation? What impact, if any does section 222(d)(3) have on the forms of customer approval in connection with section 274(c)(2)(A) activities?

Answer 18. If CPNI is not disclosed outside the BOC, opt-out consent would be sufficient to the extent that "out-of-category" activity is involved. Oral and written consent would be valid as well.

Question 19. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its separated affiliate or electronic publishing joint venture also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an “approval solicitation service” to unaffiliated electronic publishers when it provides such a service for its section 274 separated affiliates, electronic publishing joint ventures, or affiliates under section 274(c)(2)(A) with regard to the solicitation of a customer’s approval during a customer-initiated call? What specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 274 separated affiliates or electronic publishing joint ventures or affiliates over unaffiliated entities? If the customer approves disclosure to both the BOC’s section 274 separated affiliates or electronic publishing joint ventures or unaffiliated entities, must a BOC provide the customer’s CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 274 separated affiliates or electronic publishing joint ventures or affiliates?

Answer 19. No. See pp. 10, 12-14.

Question 20. To the extent that sections 222(c)(1) and 222(d)(3) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its section 274 separated affiliate, electronic publishing joint venture, or affiliate under section 274(c)(2)(A)? If, for example, a BOC may disclose CPNI to its section 274 separated affiliate pursuant to the customer’s oral or opt-out approval, is the BOC required to disclose CPNI to unaffiliated entities upon the customer’s approval pursuant to the same method.

Answer 20. No. See pp. 6-7, 9.

Question 21. Must a BOC, that is engaged in a teaming or business arrangement under section 274(c)(2)(B) with “any separated affiliate or with any other electronic publisher,” obtain customer approval before

using, disclosing, or permitting access to CPNI for such entities? What forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation?

Answer 21. If "out-of-category" activity is involved, some form of customer approval may be required. Opt-out consent would be sufficient to permit BOC use of the information.

Question 22. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of any of its teaming or business arrangements under section 274(c)(2)(B) also offer to solicit that approval on behalf of other teaming arrangements and unaffiliated electronic publishers? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers and teaming arrangements when it provides such a service for any of its teaming or business arrangements under section 274(c)(2)(B)? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its electronic publishing teaming or business arrangements over unaffiliated entities? If the customer approves disclosure to both the BOC's electronic publishing teaming or business arrangements and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its electronic publishing teaming or business arrangements?

Answer 22. No. See pp. 10, 12-14.

Question 23. To the extent that sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its teaming or business arrangements under section 274(c)(2)(B)? If, for example, a BOC may disclose CPNI to a section 274 separated affiliate with which the BOC has a teaming arrangement pursuant the customer's oral or opt-out